



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

9/28/2022

8:32am

FIFRA-08-2022-0047

Received by
EPA Region VIII
Hearing Clerk

Ref: 8ENF-AT-P

SENT VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

From: Scott Patefield
Manager, Air and Toxics Enforcement Branch
Enforcement and Compliance Assurance Division

To: U.S. Department of Homeland Security
Bureau of Customs and Border Protection
Pembina, North Dakota 3401

Subject: Requested action to be taken regarding the MS DryCare in shipment with entry number CDF-24698386

By this memorandum, the U.S. Environmental Protection Agency, Region 8, is informing the Bureau of Customs and Border Protection of the U.S. Department of Homeland Security that MS DryCare in the import shipment described below should be **Denied Entry-Refused Delivery** into the United States pursuant to the authority of section 17(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136o(c), and the implementing regulations at 19 C.F.R. section 12.114. The entry was marked "Hold Intact," "Refused," and "Re-Export" in Automated Commercial Environment (ACE) by the EPA on September 26, 2022.

The following information pertains to the shipment of the MS DryCare:

- The importer and manufacturer is Schippers Canada Ltd, 27211 Highway 12, Lacombe County, Alberta, T4L0E3 Canada.
- The consignee is Schippers USA LLC, 3233 Fieldcrest Drive, Davenport, Iowa 52806-7700. Point of contact, John Witter j.witter@schippersusa.com.
- The broker is Near North Customs Brokers US, Inc., Lisa Kapodistria lisa@nearnorthus.com.
- The file date was September 13, 2022.
- The bill number is DAYRRED6011308.
- The quantity is 240 bags of MS DryCare, approximately 13,228 pounds.
- The port of entry is Pembina, North Dakota, 3401.
- The country of origin is Canada.

The shipment that arrived at the border for import was in violation of FIFRA section 12(a)(1)(A) (7 U.S.C. § 136j(a)(1)(A)), which states that it is unlawful for any person to distribute or sell any pesticide that is not registered under section 3 of FIFRA (7 U.S.C. § 136a).

Under FIFRA, a pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, i.e., use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant. (7 U.S.C. § 136u). 40 C.F.R. § 152.15 states: “A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if... [t]he person who distributes or sells the substance claims, states, or implies (by labelling or otherwise) ... [t]hat the substance... can or should be used as a pesticide.”

Section 2(t) of FIFRA, 7 U.S.C. § 136(t) defines “pest” as “(1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 136w(c)(1) of this title.”

Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers” and defines “labeling” in part, as “all labels and all other written, printed, or graphic matter – (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide....”

The MS DryCare product labeling includes the following claims:

- “MS DryCare is a ready to use dry(ing) powder with very powerful moisture absorbing properties (> 200%), suitable for use in animal nests and bedding. MS DryCare creates a dry environment with low bacterial counts which contribute to animal health, environmental improvements, animal comfort and reduction of contamination.”
- “Hygiene powder”

These claims demonstrate a pesticidal intent pursuant to the definitions above. The products in the shipment referenced above are thus pesticides subject to FIFRA regulation.

The MS DryCare products in the shipment listed above are not registered pursuant to section 3 of FIFRA (7 U.S.C. § 136a). Therefore, this product is an unregistered pesticide. Importation of the products in the shipment referenced above is a violation of FIFRA section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), as a distribution or sale of an unregistered pesticide.

The shipment that arrived at the border for import is also in violation of FIFRA section 12(a)(2)(N), 7 U.S.C. § 136j(a)(2)(N), because a registrant, wholesaler, dealer, retailer, or other distributor failed to correctly file reports required by the Act. As required by 19 C.F.R. section 12.114, a Notice of Arrival of Pesticides and Devices, EPA form 3540-1, and a copy of one product label must be submitted.

The Agency hereby notifies U.S. Customs and Border Protection that this merchandise has been refused admission and recommends that this merchandise be re-exported or destroyed within 90 calendar days from the date of this Notice.

On September 26, 2022, the Customs and Border Patrol unit chief in Pembina, North Dakota was informed by the EPA that it would deny entry of this shipment.

Please contact Christine Tokarz, the import enforcement coordinator, by phone at (303) 312-6147 or by

email at tokarz.christine@epa.gov if you have any questions concerning this matter.